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Child Abuse and Neglect State Statutes Series

Issue Paper

Current Trends in Child Maltreatment Reporting Laws



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Issue Papers provide a comparative overview of legislation across States, including common statutory elements and variations. Legal references are current as of September 2002.

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The public interest in child protection is well reflected in the laws enacted by State legislatures. The legal status of children and the need for special legal and judicial mechanisms for their care and protection date at least from the turn of the century with the establishment of separate juvenile courts. It was not until the 1960s, however, that child maltreatment issues prompted nationwide interest in protecting the physical and mental well-being of children. Consequently, in 1963, the first model statute mandating the reporting of child abuse was drafted. Today, every State and the District of Columbia have enacted laws requiring the reporting of suspected child maltreatment.

The goal of such legislation is to ensure that victimized children are identified and to facilitate the reporting of abuse. Reporting laws generally:

- Provide guidance to those individuals required to identify and report suspected maltreatment.
- Mandate investigations by specified agencies (social services agencies, law enforcement, or other agency) to determine if a child was abused, and the delivery of protective services and treatment to the maltreated child and his family.¹

Although each State is responsible for designing and implementing its own reporting laws, the Federal government adopted a more direct role in child maltreatment policy with the passage of the Child Abuse Prevention and Treatment Act (CAPTA)² in 1974, which allocates Federal funds to States for the implementation of programs designed to identify, treat and prevent child abuse.

Reporting laws in all jurisdictions share a common purpose and similar elements. The purpose of each reporting statute is to identify and protect children whose health and welfare may be adversely affected through abuse and neglect. To achieve this purpose, all reporting laws have adopted common elements:

- Selected individuals mandated to report suspected child maltreatment
- Reportable circumstances defined (i.e., forms of child maltreatment are defined)
- Reporting procedures described
- Agencies designated to receive and investigate reports
- Provisions for immunity from prosecution
- Reporting penalties for failure to report and false reporting
- The abrogation of certain privileged communication rights
- Exemptions of certain acts or omissions from the definitions of child maltreatment
- The existence and operation of a central registry³

¹ Brian G. Fraser, *A Glance at the Past, A Gaze at the Present, A Glimpse at the Future: A Critical Analysis of the Development of Child Abuse Reporting Statutes*, 54 Chi.-Kent L. Rev. 641 (1978).

² 42 U.S.C.A. § 5101 *et. seq.* (West 1995).

³ Donald N. Duquette, *The Legal Aspects of Child Abuse and Neglect*, in *Social Work with Abused and Neglected Children* 115 (K.C. Faller ed., 1981).

However, there is great variation across States as to the particular requirements imposed by reporting laws. As a result, mandated reporters, definitions of maltreatment, privileges, exemptions, and the standards and procedures for reporting suspected abuse vary from State to State. The purpose of this paper⁴ is to examine State child abuse reporting statutes. Part I reviews the development of reporting laws, and Part II analyzes reporting trends in every State⁵ and the District of Columbia. Part III reviews the impact of mandatory reporting laws, and Part IV summarizes the paper.

I. DEVELOPMENT OF REPORTING STATUTES

In 1962, Dr. Henry Kempe and colleagues published a landmark article about the battered-child syndrome, which prompted widespread interest in child maltreatment. Dr. Kempe suggested the establishment of mandatory reporting requirements for physicians, who were reluctant to consider child abuse as a cause of physical injuries to children despite obvious circumstantial evidence. These efforts brought about initiatives to develop mandatory reporting legislation.

In 1963, the Children's Bureau, then of the Department of Health, Education and Welfare, drafted the first model child abuse reporting statute. Physicians were the focus of the model provision, as the professional group most likely by virtue of their training and experience to accurately diagnose the symptoms of abuse or neglect in a child. The statute also mandated that criminal sanctions be applied if a physician knowingly and willfully failed to report.⁶ Shortly thereafter, the American Humane Association, the American Medical Association, and the Council of State Governments developed their own model reporting provisions.

By 1967, every State had enacted reporting laws that included physicians as mandated reporters. In general, these statutes were limited to non-accidental physical injury. Other forms of maltreatment, such as neglect and sexual and emotional abuse, were added later. Reporting laws were also expanded in the late 1960s and early 1970s to include social workers, teachers, and a range of health service professionals as mandated reporters.

By 1974, many States were already in compliance with most of the reporting requirements mandated under CAPTA. It appears, however, that the passage of CAPTA increased the number of yearly reports filed. For example, in 1974, approximately 60,000 reports were filed, whereas in 2000, nearly 2.8 million were filed.⁷

⁴ This paper is part of the State Statutes Series maintained by the National Clearinghouse on Child Abuse and Neglect Information in cooperation with the National Center for Prosecution of Child Abuse. Information contained in the paper is based on and limited to the Child Abuse and Neglect State Statutes Compendium of Laws: Reporting Laws.

⁵ Hereafter, "State" as used in this paper means each of the fifty States and the District of Columbia.

⁶ Seth C. Kalichman, *Mandated Reporting of Suspected Child Abuse: Ethics, Law, & Policy* (1993).

⁷ U.S. Department of Health and Human Services, Administration on Children, Youth and Families, *Child Maltreatment 2000* (Washington, DC: U.S. Government Printing Office, 2002).

II. REPORTING TRENDS

This section analyzes reporting trends in every State for the following common elements:

- Mandated Reporters
- Reportable Circumstances
- Reporting Procedures
- Immunity
- Reporting Penalties

A. Mandated Reporters

Every State has statutes identifying mandatory reporters of child maltreatment. This designation creates a statutory duty to report, which can result in criminal and civil liability for failure to report as required. The variations among the States of who has reporting responsibilities lie in their delineation of the persons, classes, or institutions under such statutory obligation.

The broadest category of mandated reporters are those indicated by provisions that specify "any person, including but not limited to..." followed by a listing of specified professions required to report, or that begin with a listing of professions that must report, then conclude with the phrase, "or any other person..." is required to report. In approximately⁸ eighteen States, any person who suspects child abuse or neglect is required to report.⁹ The majority of States, however, limit mandatory reporting to professionals working with children.¹⁰ Individuals typically designated as mandatory reporters include:

- Physicians, nurses, hospital personnel, dentists
- Coroners
- Medical examiners
- Mental health professionals
- Social workers
- School personnel

⁸ The word *approximately* is used throughout this paper to stress the fact that statutes are constantly being revised and updated.

⁹ Del. Code Ann. tit. 16, § 909 (Supp. 1998); Fla. Stat. Ann. § 39.201(1) (West Supp. 2001); Idaho Code § 16-1619(a) (Supp. 1998); Ind. Code Ann. § 311-33-5(1)-(2) (1997); Ky. Rev. Stat. Ann. § 620.030(1), (2) (Michie Supp. 1998); Md. Code Ann. Fam. Law § 5-704(a) (Supp. 1998); Miss. Code Ann. § 43-21-353(1) (Supp. 1998); Neb. Rev. Stat. Ann. § 28-711(1) (Michie 1995); N.H. Rev. Stat. Ann. § 169-C:32 (1994); N.J. Stat. Ann. § 9:6-8.10 (West 1993); N.M. Stat. Ann. § 32A-4-3(A) (Michie Supp. 1998); N.C. Gen. Stat. § 7B-301 (Supp. 2000); Okla. Stat. Ann. § 10-7103(A)(1) (West Supp. 1999); R.I. Gen. Laws § 40-11-3(a)-(c) (1997); Tenn. Code Ann. § 37-1-403(a) (1996); Tex. Fam. Code Ann. § 261.101(a)-(b) (West Supp. 2000); Utah Code Ann. § 62A-4a-403(1) (Supp. 2000); Wyo. Stat. Ann. § 14-3-205(a) (Michie 1997).

¹⁰ See, e.g., Ariz. Rev. Stat. Ann. § 13-3620 (West Supp. 1999); Ark. Code Ann. § 12-12-507(b) (WESTLAW 2001); Conn. Gen. Stat. Ann. § 17a-101(b) (West 2001); D.C. Code Ann. § 4-1321.02 (Supp. 2001); Haw. Rev. Stat. § 350-1.1(a) (1998); Kan. Stat. Ann. § 38-1522 (WESTLAW 2001); Me. Rev. Stat. Ann. tit. 22, § 4011-A(1) (West Supp. 2001); Minn. Stat. Ann. § 626.556(3)(a) (West Supp. 2001); N.Y. Soc. Serv. Law § 413(1) (McKinney Supp. 2001); S.C. Code Ann. § 20-7-510(A) (Supp. 2001); Vt. Stat. Ann. tit. 33, § 4913(a) (Supp. 1998).

- Law enforcement officers
- Child care providers

Some reporting laws also include:

- Pharmacists¹¹
- Firefighters¹²
- Paramedics¹³
- Commercial film and photographic processors¹⁴

In addition to mandatory reporting provisions, reporting statutes may conclude, after the designation of mandated reporters, with "...or any other person *may* report." Generally, this language extends to all who report, whether or not required by law, the same legal protections from lawsuits or criminal prosecutions initiated for reporting suspected abuse.

1. Sources of Reports

The U.S. Department of Health and Human Services, Administration on Children, Youth and Families, reported that, nationwide, nearly 2.8 million children were reported to child protective services agencies as alleged victims of maltreatment in 2000. The distribution of report sources indicated that:

- Professional reporters, including law enforcement, educators, medical and mental health professionals, social services personnel, and child care providers accounted for about 56.1 percent of all reports of alleged maltreatment;
- Other relatives, friends, neighbors, parents and alleged victims accounted for 25.5 percent; and
- Anonymous or unknown sources, other sources, and alleged perpetrators accounted for 18.4 percent of the reports.¹⁵

2. Standards for Making a Report

The standards used to determine when a mandatory reporter is required to notify authorities of abuse or neglect vary slightly from State to State. Typically, a report must be made when a reporter has *reasonable cause to know, suspect, or*

¹¹ See, e.g., Ala. Code § 26-14-3(a) (Supp. 1998); Colo. Rev. Stat. Ann. § 19-3-304 (West Supp. 2001); Conn. Gen. Stat. Ann. § 17a-101(b) (West 2001); Haw. Rev. Stat. § 350-1.1(a) (Supp. 2000).

¹² See, e.g., Cal. Penal Code § 11165.7 (West Supp. 2001); Kan. Stat. Ann. § 38-1522 (WESTLAW 2001).

¹³ See, e.g., La. Children's Code Ann. art. 603(13), 609(F) (West Supp. 2001); Nev. Rev. Stat. Ann. § 432B.220 (WESTLAW 2001); Wis. Stat. Ann. § 48.981 (West Supp. 2001).

¹⁴ See, e.g., Colo. Rev. Stat. Ann. § 19-3-304 (West Supp. 2001); Me. Rev. Stat. Ann. tit. 22, § 4011-A (West Supp. 2001); S.C. Code Ann. § 20-7-510 (Supp. 2001).

¹⁵ U.S. Department of Health and Human Services, Administration on Children, Youth and Families, *Child Maltreatment 2000* (Washington, DC: U.S. Government Printing Office, 2002).

believe that a child has been abused or neglected.¹⁶ Actual knowledge of abuse is not required. Other statutory phrases used to trigger the filing of a report include:

- Reason to believe¹⁷
- Know or suspect¹⁸
- Observe¹⁹

In at least one State, a report is not required if the abuse is not a recent occurrence. For instance, Minnesota only requires a mandated reporter to file a report if he knows or has reason to believe that a child has been neglected or physically or sexually abused within the preceding 3 years.²⁰ Most States, however, do not limit the filing of a report based on the date that the abuse occurred.²¹

3. Abrogation of Privileged Communications

Mandatory reporting statutes also specify when communications are confidential. Under the law, communications in certain relationships are given special protection. For example, the content of communications between an attorney and client, physician and patient, and clergy and penitent is often protected by a privilege. This means that the professional in such relationships is prohibited from disclosing confidential information communicated to him by his client, patient, etc. to any unauthorized person.

Consequently, approximately 26 States specify in their reporting laws when such a communication is privileged.²² In this context, privileged

¹⁶ See, e.g., Alaska Stat. §§ 47.17.023 & 47.17.020 (Michie 1996 & Supp. 1998); Ark. Code Ann. § 12-12-507 (WESTLAW 2001); Colo. Rev. Stat. Ann. § 19-3-304 (West Supp. 2001); Conn. Gen. Stat. Ann. § 17a-103(a) (West Supp. 2001); Ga. Code Ann. §§ 19-7-5 & 16-12-100 (Supp. 2001); Mass. Gen. Laws Ann. ch. 119, § 51A (West Supp. 1998); Mich. Comp. Laws Ann. § 722.631 (West Supp. 1999); Miss. Code Ann. § 43-21-353 (Supp. 1998); Mo. Ann. Stat. §§ 210.115 & 568.110 (West Supp. 2000); Neb. Rev. Stat. Ann. § 28-711 (Michie 1995); Or. Rev. Stat. Ann. §§ 419B.010 & 419B.005 (WESTLAW 2001); R.I. Gen. Laws §§ 40-11-3 & 40-11-6 (1997); S.D. Codified Laws § 26-8A-3 (Michie Supp. 2000); Vt. Stat. Ann. tit. 33, § 4913 (Supp. 1998); Wash. Rev. Code Ann. § 26.44.030 (West Supp. 2000); W. Va. Code Ann. § 49-6A-2 (Supp. 2001); Wis. Stat. Ann. § 48.981 (West Supp. 2001).

¹⁷ See, e.g., Haw. Rev. Stat. § 350-1.1 (Supp. 2000); Idaho Code § 16-1619(a) (Supp. 1998); Ind. Code Ann. § 31-33-5(1)-(2) (1997); Md. Code Ann. Fam. Law § 5-704(a) (Supp. 2000); S.C. Code Ann. § 20-7-510(A) (Supp. 2001); Utah Code Ann. § 62A-4a-403(1) (Supp. 2000).

¹⁸ See, e.g., Ala. Code § 26-14-3(a) (Supp. 1998); Ohio Rev. Code Ann. § 2151.421 (Anderson Supp. 2000).

¹⁹ See, e.g., Cal. Penal Code §§ 11166 & 11165.7 (West Supp. 2000); La. Children's Code Ann. art. 609 & 610(F) (West Supp. 2001); Neb. Rev. Stat. Ann. § 28-711 (Michie 1995).

²⁰ Minn. Stat. Ann. § 626.556 (West Supp. 2001).

²¹ See Dep't of Health and Human Services, Child Abuse and Neglect States Statutes Compendium of Laws: Definitions of Child Abuse and Neglect (2002).

²² Ala. Code § 26-14-10 (1992); Ariz. Rev. Stat. Ann. §§ 13-3620(A) & 8-805 (West Supp. 1999); Cal. Penal Code § 11166(c) (West Supp. 2002); Del. Code Ann. tit. 16, § 909 (Supp. 1998); Fla. Stat. Ann. § 39.204 (West Supp. 2001); Idaho Code § 16-1620 (Supp. 1998); Ky. Rev. Stat. Ann. § 620.050(2) (Michie Supp. 1998); La. Children's Code Ann. art. 603(13)(b) (West Supp. 2001); Me. Rev. Stat. Ann. tit. 22, § 4015 (West 1992); Md. Code Ann. Fam. Law § 5-705 (Supp. 2000); Mich. Comp. Laws Ann. § 722.631 (West Supp. 1999); Minn. Stat. Ann. § 626.556 (West Supp. 2001); Mo. Ann. Stat. § 210.140 (West Supp. 2001); Mont. Code Ann. § 41-3-201(4) (Supp. 2001); Nev. Rev. Stat. Ann. § 432B.250 (Supp. 2001); N.H. Rev. Stat. Ann. § 169-C:32 (Supp.

communications are specific situations where mandatory reporters are not required by law to report instances of child maltreatment. The attorney-client privilege is most frequently maintained by States.²³ The privilege pertaining to clergy-penitent is also frequently recognized by States.²⁴ For instance, when a priest becomes aware of child maltreatment during a confession or in the capacity of spiritual advisor, he is not required to report.

However, there is a strong public policy toward disclosing allegation of child abuse in many jurisdictions. Therefore, about half of the States include provisions that certain privileges do not negate the duty to report instances of child maltreatment, or otherwise permit such reports. Most States abrogate (i.e., revoke) the physician-patient, mental health professional-patient, and husband-wife privileges.²⁵ When a privileged communication is abrogated, a mandated reporter is required by law to report instances of child maltreatment and to cooperate in the ensuing investigation.

B. Reportable Circumstances

In addition to specifying who must and who may report, child maltreatment statutes describe what must be reported—those conditions that reporters are to identify. Such statutes generally define the age limits of reportable children, forms of maltreatment (i.e., physical, sexual, or emotional abuse, neglect, etc.), possible perpetrators of abuse or neglect, and exemptions from the definitions of abuse and neglect.

The typical pattern is for States to indicate that abuse or neglect is to be reported with reference to the definitions of those actions and omissions that constitute child

2001); N.C. Gen. Stat. § 7B-310 (Supp. 2000); N.D. Cent. Code §§ 50-25.1-03(1) & 50-25.1-10 (Supp. 1997); Ohio Rev. Code Ann. § 2152.421 (Anderson Supp. 2000); Or. Rev. Stat. Ann. § 419B.010 (Supp. 2001); 23 Pa. Cons. Stat. Ann. § 6311(a) (West Supp. 1998); R.I. Gen. Laws § 40-11-11 (1997); S.C. Code Ann. § 20-7-550 (Law. Co-op. Supp. 1998); Utah Code Ann. § 62A-4a-403 (Supp. 2000); W.Va. Code Ann. § 49-6A-7 (1996); Wyo. Stat. Ann. § 14-3-210 (Michie 1997).

²³ See, e.g., Ala. Code § 26-14-10 (1992); Ariz. Rev. Stat. Ann. § 8-805 (West Supp. 1998); Del. Code Ann. tit. 16, § 909 (Supp. 1998); Fla. Stat. Ann. § 39.204 (West Supp. 1999); Ky. Rev. Stat. Ann. § 620.050(2) (Michie Supp. 1998); Md. Code Ann. Fam. Law § 5-705 (Supp. 2000); Mich. Comp. Laws Ann. § 722.631 (West Supp. 1999); Mo. Ann. Stat. § 210.140 (West Supp. 2001); N.H. Rev. Stat. Ann. § 169-C:32 (1994); N.C. Gen. Stat. § 7B-310 (Supp. 2000); N.D. Cent. Code § 50-25.1-10 (Supp. 1997); Or. Rev. Stat. Ann. § 419B.010 (1995); R.I. Gen. Laws § 40-11-11 (1997); S.C. Code Ann. § 20-7-550 (Law. Co-op. Supp. 1998); W.Va. Code Ann. § 49-6A-7 (1996); Wyo. Stat. Ann. § 14-3-210 (Michie 1997).

²⁴ See, e.g., Ariz. Rev. Stat. Ann. § 13-3620(A)-(B) (West Supp. 1999); Cal. Penal Code § 11166(c) (West Supp. 2002); Del. Code Ann. tit. 16, § 909 (Supp. 1998); Idaho Code § 16-1619 (Supp. 1998); Ky. Rev. Stat. Ann. § 620.050(2) (Michie Supp. 1998); La. Children's Code Ann. art. 603(13)(b) (West Supp. 2001); Me. Rev. Stat. Ann. tit. 22, § 4011-A (West Supp. 2001); Md. Code Ann. Fam. Law § 5-705 (Supp. 2000); Minn. Stat. Ann. § 626.556 (West Supp. 2001); Mont. Code Ann. § 41-3-201(4) (Supp. 2001); Nev. Rev. Stat. Ann. § 432B.220 (2001); N.D. Cent. Code § 50-25.1-03(1) (Supp. 1997); Or. Rev. Stat. Ann. § 419B.010 (2001); 23 Pa. Cons. Stat. Ann. § 6311(a) (West Supp. 1998); S.C. Code Ann. § 20-7-550 (Law. Co-op. Supp. 1998); Utah Code Ann. § 62A-4a-403 (Supp. 2000); Wyo. Stat. Ann. § 14-3-210 (Michie 1997). See also Dep't of Health and Human Services, Child Abuse and Neglect State Statutes Ready Reference: Clergy As Mandated Reporters (2002).

²⁵ See, e.g., Alaska Stat. § 47.17.060 (Michie 1996); Ariz. Rev. Stat. Ann. § 8-805 (West Supp. 1999); Colo. Rev. Stat. Ann. § 19-3-311 (West Supp. 1998); Haw. Rev. Stat. § 350-5 (1998); Ind. Stat. Ann. § 31-32-11-1 (1997); Ky. Rev. Stat. Ann. § 620.050(2) (Michie Supp. 1998).

maltreatment. As applied to reporting statutes, legal definitions of abuse and neglect determine the minimum standards of care and protection owed a child, and serve as important guidelines for mandated reporters as to which acts or omissions constitute child maltreatment.²⁶ CAPTA provides minimum standards for the definition of abuse and neglect that States must incorporate in their statutory definitions. Under CAPTA:

Child is a person who has not attained the lesser of:

- The age of 18; or
- Except in the case of sexual abuse, the age specified by the child protection law of the State in which the child resides.²⁷

Child abuse and neglect, at a minimum is:

- Any recent act or failure to act by a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm.²⁸

Sexual abuse is:

- The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or
- The rape, and in cases of caretaker or inter-familial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children.²⁹

Perpetrator of abuse and neglect is:

- A parent or caretaker.

Based on CAPTA guidelines, each State provides its own definitions of child maltreatment. All States have expanded their definitions of maltreatment beyond the requirements mandated under CAPTA. There are, however, various differences among States regarding the parameters of what constitutes reportable circumstances of abuse.

1. Age Limits of Reportable Children

An important element of the definition of child abuse and neglect is the age at which a person is no longer considered a child for reporting purposes. Almost all States specify that a maltreated victim is considered a child for

²⁶ "Child abuse" and "child neglect" are also defined in statutes governing the juvenile court for determination of child dependency, and in State criminal codes for defining unlawful behavior.

²⁷ 42 U.S.C.A. § 5106g(1) (West Supp. 1998).

²⁸ 42 U.S.C.A. § 5106g(2) (West Supp. 1998).

²⁹ 42 U.S.C.A. § 5106g(4) (West Supp. 1998).

reporting purposes when he is under 18 years of age or not reached his 18th birthday.³⁰ Interestingly, Connecticut distinguishes between a youth, "any person 16 to 18 years of age" and a child, "any person under 16 years of age."³¹ However, both youth and child are included in the State's definition of abuse and neglect. In Tennessee, a child is a "person who is under 18 years of age or who is reasonably presumed to be under 18 years of age."³²

There are very few limitations where a person under 18 might not be considered a minor for reporting purposes. In Oregon, for example, a "child means an unmarried person who is under 18 years of age."³³ Additionally, Illinois defines child as "any person under the age of 18 years, unless legally emancipated by reason of marriage or entry into a branch of the United States armed services."³⁴ Similarly, in Florida, a child or youth means "any unmarried person under the age of 18 years who has not been emancipated by order of the court and who has been alleged or found to be dependent."³⁵

2. Standards of Abuse

The standard for what constitutes abuse varies among States. In many States, "abuse and neglect," "injury to a child" or other reportable conditions are defined in terms of *harm* or *threatened harm* to a child's health or welfare, including certain injuries to the child.³⁶ A typical statute reads, "abuse means harm or threatened harm to the health or welfare of a child through: nonaccidental physical injury; nonaccidental mental injury; sexual abuse or attempted sexual abuse; or sexual exploitation or attempted sexual exploitation."³⁷ Other standards of abuse include the *inflicting* or *allowing to be inflicted*,³⁸ and *knowingly, intentionally, or negligently causing*.³⁹

³⁰ See, e.g., Alaska Stat. § 47.17.290 (Lexis Supp. 2000); Ark. Code Ann. § 12-12-503 (WESTLAW 20001); Del. Code Ann. tit. 16, § 902 (Supp. 2001); Ga. Code Ann. § 19-7-5 (Supp. 2001); N.H. Rev. Stat. Ann. § 169-C:3 (Supp. 2001); R.I. Gen. Laws § 40-11-2 (Supp. 2000); Utah Code Ann. § 62A-4a-402 (Supp. 1998); Wash. Rev. Code Ann. § 26.44.020 (West Supp. 2000); Wyo. Stat. Ann. § 14-3-202 (Michie 1997).

³¹ Conn. Gen. Stat. Ann. § 46b-120 (West Supp. 2001).

³² Tenn. Code Ann. § 37-1-401 (1996).

³³ Or. Rev. Stat. Ann. § 419B.005 (WESTLAW 2001).

³⁴ 325 Ill. Comp. Stat. Ann. 5/3 (West Supp. 2001). See also Miss. Code Ann. § 43-21-105 (Supp. 2002).

³⁵ Fla. Stat. Ann. § 39.01 (West Supp. 2000).

³⁶ See, e.g., Alaska Stat. § 47.17.290 (Lexis Supp. 1999); Colo. Rev. Stat. Ann. § 19-1-103 (West Supp. 2001); Ky. Rev. Stat. Ann. § 600.020 (Michie Supp. 2000); Mich. Comp. Laws Ann. § 722.622 (Supp. 2000); Mont. Code Ann. § 41-3-102 (Supp. 2001); Nev. Rev. Stat. Ann. § 432B.020 (WESTLAW 2001); Ohio Rev. Code Ann. § 2152.031 (Anderson 1994); Okla. Stat. Ann. § 10-7102(B) (West Supp. 2001); R.I. Gen. Laws § 40-11-2 (Supp. 2000); S.C. Code Ann. § 20-7-490 (Supp. 2000); Utah Code Ann. § 62A-4a-402 (Supp. 1998); W. Va. Code Ann. § 49-1-3 (Supp. 2000).

³⁷ Ala. Code § 26-14-1 (Supp. 1998).

³⁸ See, e.g., 325 Ill. Comp. Stat. Ann. 5/3 (WESTLAW 2001); N.J. Stat. Ann. § 9:6-8.9 (West 1993); N.C. Gen. Stat. § 7B-101 (Supp. 2000).

³⁹ See, e.g., Ark. Code Ann. § 12-12-503 (WESTLAW 2001); Neb. Rev. Stat. Ann. § 28-710 (Michie Supp. 1998); N.M. Stat. Ann. § 32A-4-2 (Michie Supp. 1999).

3. Forms of Maltreatment

The most commonly encountered injuries or conditions to a child include:

- Physical abuse
- Neglect
- Sexual abuse
- Emotional maltreatment
- Sexual exploitation

Every State includes non-accidental physical injury and sexual abuse in their definitions of child abuse. While some States present physical abuse in vague, general terms,⁴⁰ others contain detailed lists of specific acts or resulting medical conditions such as skin bruising, bleeding, burns, bone fractures, subdural hematoma, soft tissue swelling, and failure to thrive.⁴¹ Additionally, some States refer in nonspecific terms to sexual abuse,⁴² while others specify various acts as sexual abuse. For example, Maryland defines sexual abuse as incest, rape, or sexual offense in any degree; sodomy; and unnatural or perverted sexual practices.⁴³

In addition, almost all States include the elements of neglect, emotional maltreatment and sexual exploitation in their definitions of abuse. A few States define child abuse and neglect as a single concept,⁴⁴ while others provide separate definitions. Neglect, however, is frequently defined in terms of deprivation of adequate food, clothing, shelter, or medical care.⁴⁵ Some States distinguish between failure to provide based on the financial inability to do so and the failure to provide for no apparent financial reason.⁴⁶ The latter constitutes neglect.

⁴⁰ See, e.g., Alaska Stat. § 47.17.290 (Michie Supp. 2000); Conn. Gen. Stat. Ann. § 46b-120 (West Supp. 2001); Del. Code Ann. tit. 16, § 902 (Supp. 2001); Ga. Code Ann. § 19-7-5(b) (Supp. 2001); 325 Ill. Comp. Stat. Ann. 5/3 (WESTLAW 2001); Iowa Code Ann. § 232.68 (WESTLAW 2001); Ky. Rev. Stat. Ann. § 600.020 (Supp. 2000); La. Children's Code Ann. art 603 (West Supp. 2001); Or. Rev. Stat. Ann. § 419B.005 (WESTLAW 2001).

⁴¹ Colo. Rev. Stat. Ann. § 19-1-103 (West Supp. 2001).

⁴² See, e.g., Ariz. Rev. Stat. Ann. § 8-201 (West Supp. 1998); Del. Code Ann. tit. 16, § 902 (Supp. 2001); D.C. Code Ann. § 16-2301 (Supp. 2001); Iowa Code Ann. § 232.68 (WESTLAW 2001); Mass. Gen. Laws Ann. ch. 119, § 51A (West Supp. 1998); Mo. Ann. Stat. § 210.110 (West Supp. 2001); Wash. Rev. Code Ann. § 26.44.020 (West Supp. 2000).

⁴³ Md. Code Ann. Fam. Law § 5-701 (Supp. 2001).

⁴⁴ See, e.g., Ga. Code Ann. § 19-7-5 (Supp. 2001); Haw. Rev. Stat. § 350-1 (1998); Iowa Code Ann. § 232.68 (WESTLAW 2001); Mass. Gen. Laws Ann. ch. 119, § 51A (West Supp. 1998); Neb. Rev. Stat. Ann. § 28-710 (Michie Supp. 1998); N.J. Stat. Ann. § 9:6-8.9 (West 1993); Or. Rev. Stat. Ann. § 419B.005 (WESTLAW 2001).

⁴⁵ See, e.g., Ala. Code Ann. § 26-14-1 (Supp. 1998); Alaska Stat. § 47.17.290 (Supp. 2001); Del. Code Ann. tit. 16, § 902 (Supp. 2001); Fla. Stat. Ann. § 39.01 (West Supp. 2000); La. Children's Code Ann. art. 603 (West Supp. 2001); Mo. Ann. Stat. § 210.110 (West Supp. 2001); Nev. Rev. Stat. Ann. § 432B.140 (1997); Wyo. Stat. Ann. § 14-3-202 (Michie 1997).

⁴⁶ See, e.g., Ark. Code Ann. § 12-12-503 (WESTLAW 2001); D.C. Code Ann. § 16-2301 (2001); N.H. Rev. Stat. Ann. § 169-C:3 (Supp. 2001); 23 Pa. Cons. Stat. Ann. § 6303 (West Supp. 1998); Tex. Fam. Code Ann. § 261.001 (West Supp. 2001); W. Va. Code Ann. § 49-1-3 (Supp. 2000); Wis. Stat. Ann. § 48.981 (WESTLAW 2002).

Although almost all States refer to mental injury or emotional abuse in their reporting provisions, most do not clearly define what is meant by those terms. Not surprisingly, emotional abuse is generally described as the most ambiguous form of child maltreatment, as it is very difficult to prove. The definitions of "mental injury" and "emotional abuse" provided in reporting laws are either not defined at all,⁴⁷ or have basically two phrasings, both of which focus on demonstrable harm to the child as evidence by forms of mental illness such as severe anxiety, depression, withdrawal, or untoward aggressive behavior,⁴⁸ or as evinced by discernible impairment of the child's ability to function within a normal range of performance.⁴⁹

Lastly, sexual exploitation is defined in most jurisdictions to include allowing, permitting, or encouraging a child to engage in prostitution and/or in pornographic photographing, filming, or other forms illustrating sexual conduct.⁵⁰

a. Child Maltreatment Victims

The U.S. Department of Health and Human Services, Administration on Children, Youth and Families reported that approximately 879,000 children were identified as victims of substantiated or indicated abuse or neglect in 2000. Of these children:

- 62.8 percent of the victims suffered **neglect**, including **medical neglect**;
- 19.3 percent suffered **physical abuse**;
- 10.1 percent were **sexually abused** and **psychological abuse** or **neglect** accounted for 7.7 percent of all victims; and
- 16.6 percent were subjected to other types of maltreatment, such as **abandonment, congenital drug addiction** and **threats to harm the child**.⁵¹

⁴⁷ See, e.g., Ala. Code Ann. § 26-14-1 (Supp. 1998); Conn. Gen. Stat. Ann. § 46b-120 (West Supp. 2001); Del. Code Ann. tit. 16, § 902 (Supp. 2001); D.C. Code Ann. § 16-2301 (Supp. 2001); 325 Ill. Comp. Stat. Ann. 5/3 (WESTLAW 2001); Mich. Comp. Laws Ann. § 722.622 (West Supp. 2000); Mo. Ann. Stat. § 210.110 (West Supp. 2001); Neb. Rev. Stat. Ann. § 28-710 (Michie Supp. 1998); Ohio Rev. Code Ann. § 2151.031 (Anderson 1994); Utah Code Ann. § 62A-4a-402 (Supp. 1998); Va. Code Ann. § 63.1-248.2 (Lexis Supp. 2000); W. Va. Code Ann. § 49-1-3 (Supp. 2000).

⁴⁸ Ariz. Rev. Stat. Ann. § 8-201 (West Supp. 1998); Wis. Stat. Ann. § 48.02 (West Supp. 1998). See also N.Y. Family Court Law § 1012 (McKinney Supp. 1999); 23 Pa. Cons. Stat. Ann. § 6303 (West Supp. 1998); R.I. Gen. Laws § 40-11-2 (Supp. 2000).

⁴⁹ See, e.g., Alaska Stat. § 47.17.290 (Supp. 2000); Colo. Rev. Stat. Ann. § 19-1-103 (West Supp. 2001); Fla. Stat. Ann. § 39.01 (West Supp. 2001); Idaho Code § 16-1602 (WESTLAW 2001); Iowa Code Ann. § 232.68 (WESTLAW 2001); Nev. Rev. Stat. Ann. § 432B.070 (1997); S.D. Codified Laws § 26-8A-2 (Michie Supp. 1998); Tenn. Code Ann. § 37-1-602 (Supp. 2000); Wyo. Stat. Ann. § 14-3-202 (Michie 1997).

⁵⁰ See, e.g., Ala. Code § 26-14-1 (Supp. 1998); Ark. Code Ann. § 12-12-503 (WESTLAW 2001); D.C. Code Ann. § 16-2301 (Supp. 2001); Ga. Code Ann. § 19-7-5 (Supp. 2001); Ky. Rev. Stat. Ann. § 600.020 (Supp. 2000); Mich. Comp. Laws Ann. § 722.622 (West Supp. 2001); Mont. Code Ann. § 41-3-102 (Supp. 2001); N.M. Stat. Ann. § 32A-4-2 (Supp. 1999); Okla. Stat. Ann. § 10-7102 (West Supp. 2001); Wash. Rev. Code Ann. § 26.44.020 (West Supp. 2000).

⁵¹ U.S. Department of Health and Human Services, Administration on Children, Youth and Families, *Child Maltreatment 2000* (Washington, DC: U.S. Government Printing Office, 2002).

b. Drug-Exposed Infants

Several jurisdictions also mandate the reporting of newborn infants who show signs of prenatal substance exposure as suspected child abuse and neglect. Some States mandate the reporting of all infants who test positive for drugs. In Illinois, for example, the definition of "neglected child" includes a "newborn infant whose blood, urine, or meconium contains any amount of a controlled substance...or a metabolite thereof, with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of medical treatment administered to the mother or the newborn infant."⁵² Additionally, Minnesota's definition of neglect includes "prenatal exposure to a controlled substance...used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance."⁵³

Other States mandate the reporting of cases in which infants are born drug-dependent. In Massachusetts, for example, the filing of a report is mandated if there is reasonable cause to believe that a child is "physically dependent upon an addictive drug at birth."⁵⁴ In addition, Oklahoma's statute states that any health care professional who attends "the birth of a child who appears to be a child born in a condition of dependence on a controlled dangerous substance, shall promptly report the matter..."⁵⁵ As stated above, Minnesota also requires the reporting of a child who experiences withdrawal symptoms at birth or developmental delays during the child's first year of life.

4. Perpetrator Clause

Another essential element of the definition of abuse and neglect is the description of who is responsible for the care and protection of the child, and therefore; who may be reported as having breached this duty by abusive or neglectful acts. In general, State reporting laws apply to maltreatment by a parent, guardian, custodian or other person responsible for the child's care.⁵⁶ Some States now require that the maltreatment by others who live in the child's home be reported as well.⁵⁷

⁵² 325 Ill. Comp. Stat. Ann. 5/3 (WESTLAW 2001).

⁵³ Minn. Stat. Ann. § 626.556(2) (West Supp. 1999).

⁵⁴ Mass. Gen. Laws Ann. ch. 119, § 51A (West Supp. 1998).

⁵⁵ Okla. Stat. Ann. § 10-7103(A)(2) (West Supp.2001).

⁵⁶ See, e.g., D.C. Code Ann. § 4-1301.02 (Supp. 2001); Ga. Code Ann. § 19-7-5 (Supp. 2001); Ind. Code Ann. § 31-9-2-0.5 (West Supp. 2001); Kan. Stat. Ann. § 38-1502 (WESTLAW 2001); Ky. Rev. Stat. Ann. § 600.020 (Supp. 2000); Miss. Code Ann. § 43-21-105 (Supp. 2002); N.M. Stat. Ann. § 32A-4-2 (Michie Supp. 1999).

⁵⁷ See, e.g., 325 Ill. Comp. Stat. Ann. 5/3 (WESTLAW 2001); Md. Code Ann. Fam. Law § 5-701 (Supp. 2001); Mont. Code Ann. § 41-3-102 (2001).

A number of States have also expanded their reporting laws to include abuse occurring in out-of-home placements, such as foster care, institutions, and day care.⁵⁸ Additionally, Missouri does not limit the term "abuse" to abuse inflicted by a person responsible for the child's care, custody and control, but includes abuse inflicted by any other person.⁵⁹

In some jurisdictions, child maltreatment is defined only in terms of the harm to the child, without reference to the perpetrator of the abuse or neglect. For instance in Alabama, abuse means harm or threatened harm to the health or welfare of a child through: nonaccidental physical injury; nonaccidental mental injury; sexual abuse or attempted sexual abuse; or sexual exploitation or attempted sexual exploitation.⁶⁰

5. Exemptions from the Definitions of Abuse and Neglect

A number of States also provide exemptions in their reporting laws. These States have exempted certain acts or omissions from their definitions of child abuse and neglect. The most common exemptions are in the areas of corporal punishment and religion. For example, in several jurisdictions corporal discipline of a child by a parent, legal custodian, or caregiver for disciplinary purposes does not constitute abuse when it is reasonable and moderate.⁶¹ A few States also exempt from their definitions of abuse an injury caused by reasonable and necessary force by a peace officer acting in the course and scope of his employment.⁶²

The majority of States, approximately thirty-four, include provisions in their reporting laws⁶³ stating that parental religious beliefs should be considered when a child might otherwise be considered abused or neglected.⁶⁴ A distinction

⁵⁸ See, e.g., Ark. Code Ann. § 12-12-503 (WESTLAW 2001); N.H. Rev. Stat. Ann. § 169-C:3 (Supp. 2001); N.D. Cent. Code § 50-25.1-02 (Supp. 1997); Ohio Rev. Code Ann. § 2151.011 (Supp. 2001); Okla. Stat. Ann. § 10-7102 (West Supp. 2001); S.C. Code Ann. § 20-7-490 (Supp. 2000). Research indicated that abuse in out-of-home placements represented about 0.7% of all confirmed cases in 2000. U.S. Department of Health and Human Services, Administration on Children, Youth and Families, *Child Maltreatment 2000*. (Washington, DC: U.S. Government Printing Office, 2002).

⁵⁹ Mo. Ann. Stat. § 210.115 (West Supp. 2002).

⁶⁰ Ala. Code § 26-14-1 (Supp. 1998).

⁶¹ See, e.g., Ark. Code Ann. § 12-12-503 (WESTLAW 2001); Colo. Rev. Stat. Ann. § 19-1-103 (West Supp. 2001); Fla. Stat. Ann. § 39.01 (West Supp. 2000); Ind. Code Ann. § 31-34-1-15 (Michie 1997); Mo. Ann. Stat. § 210.110 (West Supp. 2001); Ohio Rev. Code Ann. § 2151.031 (Anderson 1994); Okla. Stat. Ann. § 10-7106 (West Supp. 2000); Or. Rev. Stat. Ann. § 419B.005 (Supp. 1999); S.C. Code Ann. § 20-7-490 (Supp. 2000).

⁶² See, e.g., Cal. Penal Code § 11165.6 (West Supp. 2002); Colo. Rev. Stat. Ann. § 19-1-103 (West Supp. 2001).

⁶³ Religious exemptions are also included in some State criminal statutes as well.

⁶⁴ Ala. Code § 26-14-7.2(a) (Supp. 1998); Alaska Stat. § 47.17.020(d) (1996); Ariz. Rev. Stat. Ann. § 8-201 (West Supp. 1998); Cal. Penal Code § 11165.2(b) (West 1992); Colo. Rev. Stat. Ann. § 19-3-103 (West Supp. 1998); Conn. Gen. Stat. Ann. § 17a-104 (West 2000); Del. Code Ann. tit. 16, § 913 (Supp. 1998); D.C. Code Ann. § 16-2301 (Supp. 2001); Fla. Stat. Ann. § 39.01(45) (West Supp. 2000); Ga. Code Ann. § 19-7-5(b) (Supp. 2001); Idaho Code § 16-1602 (WESTLAW 2001); 325 Ill. Comp. Stat. Ann. 5/3 (WESTLAW 2001); Ind. Code Ann. § 31-34-1-14 (Michie 1997); Iowa Code Ann. § 232.68(2) (WESTLAW 2001); Kan. Stat. Ann. § 38-1502(cc) (WESTLAW 2001); Ky. Rev. Stat. Ann. § 600.020 (Supp. 2000); La. Children's Code Ann. art 603(14) (West Supp. 2001); Me. Rev. Stat. Ann. tit. 22, § 4010(1) (West 1992); Mich.Comp. Laws Ann. § 722.634 (West 1992);

is made between those situations in which a parent takes no action or refuses consent to certain medical procedures (i.e., blood transfusions) because of religious beliefs, and those in which the parent is affirmatively seeking treatment solely by spiritual means for the child.

Under CAPTA, States are neither required or prohibited from finding abuse or neglect in cases in which a parent or legal guardian relies solely or partially upon spiritual means rather than medical treatment.

- However, a State, at a minimum, must permit the child protective services system of the State to pursue any legal remedies to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child.
- Case by case determinations concerning the exercise of the authority will be within the sole discretion of the State.⁶⁵

Several States do allow the administering of medical treatment where the child's health requires it.⁶⁶ A few jurisdictions mandate that medical care can only be provided when there is a *life-threatening situation*, or the child's condition will result in a *serious disability*.

- For example, in Colorado, the religious rights of a parent, guardian or legal custodian shall not limit the access of a child to medical care in a *life-threatening situation* or when the *condition will result in serious disability*. The court may order a medical evaluation of the child to determine whether the child is in a life-threatening situation or serious disability.⁶⁷
- In addition, Pennsylvania's statute states that the county agency shall seek court-ordered medical intervention when the lack of medical care threatens the child's life or long-term health.⁶⁸

Minn. Stat. Ann. § 626.556(2) (West Supp. 2001); Miss. Code Ann. § 43-21-105 (Supp. 2002); Mo. Ann. Stat. § 210.115(3) (West Supp. 2001); Mont. Code Ann. § 41-3-102 (Supp. 2001); Nev. Rev. Stat. Ann. § 432B.020(2) (WESTLAW 2001); N.H. Rev. Stat. Ann. § 169-C:3(XIX) (Supp. 2001); N.M. Stat. Ann. § 32A-4-2(C) (Supp. 1999); Ohio Rev. Code Ann. § 2151.03(B) (Anderson 1994); Okla. Stat. Ann. § 10-7103(E) (West Supp. 1999); Or. Rev. Stat. Ann. § 419B.005 (Supp. 2000); 23 Pa. Const. Stat. Ann. § 6303 (West Supp. 1998); Vt. Stat. Ann. tit. 33, § 4912 (Supp. 2000); Va. Code Ann. § 63.1-248.2(2) (Lexis Supp. 2000); Wash. Rev. Code Ann. § 26.44.020(3) (West Supp. 2000); Wyo. Stat. Ann. § 14-3-202 (Michie 1997).

⁶⁵ 42 U.S.C.A. § 5106i (West Supp. 1998).

⁶⁶ See, e.g., Ala. Code § 26-14-7.2(a) (Supp. 1998); Fla. Stat. Ann. § 39.01(45) (West Supp. 2000); Ind. Code Ann. § 31-34-1-14 (Michie 1997); Ky. Rev. Stat. Ann. § 600.020 (Supp. 2000); La. Children's Code Ann. art 603(14) (West Supp. 2000); Mich. Comp. Laws Ann. § 722.634 (West 1992); Mo. Ann. Stat. § 210.115(3) (West Supp. 2001); Nev. Rev. Stat. Ann. § 432B.020(2) (WESTLAW 2001); Okla. Stat. Ann. § 10-7103(E) (West Supp. 2001).

⁶⁷ Colo. Rev. Stat. Ann. § 19-1-103 (West Supp. 1998).

⁶⁸ 23 Pa. Cons. Stat. Ann. § 6303 (West Supp. 1998).

Other jurisdictions attempt to ensure a child's safety by statutorily mandating that *Christian Science practitioners, practitioners who rely solely on spiritual means for healing and licensed or registered professionals of the healing arts* report instances of suspected child maltreatment.⁶⁹

C. Reporting Procedures

Every State has statutes specifying procedures that a mandatory reporter must follow when making a report of suspected child abuse or neglect. Procedures usually include the filing of the generally oral initial report and the follow-up written report. The majority of jurisdictions require that oral reports of child maltreatment be made *immediately* to the specified authority.⁷⁰ A handful of States require that reporters report the matter promptly,⁷¹ whereas a few jurisdictions specify a time limit of 24 hours⁷² and 48 hours in other States.⁷³ The statutory requirement of reporting suspected maltreatment "immediately" or "promptly" is intended to protect children from potentially serious consequences of delay.

Several jurisdictions also require that written reports follow the initial oral report. This requirement, however, only pertains to mandated reporters in most of these States.⁷⁴ Other jurisdictions require reporters to file written reports upon request.⁷⁵ Reporting laws also contain provisions describing for reporters what information must be included in the report. Typically, reports contain the following information:

⁶⁹ See, e.g., Alaska Stat. §§ 47.17.023 & 47.17.020 (Michie 1996 & Supp. 2001); Colo. Rev. Stat. Ann. § 19-3-304 (West Supp. 2001); Fla. Stat. Ann. § 39.201 (West Supp. 2001); 325 Ill. Comp. Stat. Ann. 5/4 (WESTLAW 2001); Kan. Stat. Ann. § 38-1522 (WESTLAW 2001); Minn. Stat. Ann. § 626.556(3) (West Supp. 2001); Mo. Ann. Stat. §§ 210.115 & 568.110 (West Supp. 2000); Ohio Rev. Code Ann. § 2151.421 (Supp. 2000); 23 Pa. Cons. Stat. Ann. § 6311 (West Supp. 1998).

⁷⁰ See, e.g., Ala. Code § 26-14-3 (Supp. 1997); Alaska Stat. § 47.17.020 (Supp. 1999); Ark. Code Ann. § 12-12-507 (WESTLAW 2001); Cal. Penal Code § 11166 (West Supp. 2002); Colo. Rev. Stat. Ann. § 19-3-304 (West Supp. 2001); Del. Code Ann. tit. 16, § 904 (1995); 325 Ill. Comp. Stat. Ann. 5/4 (WESTLAW 2001); Ky. Rev. Stat. Ann. § 620.030 (Michie Supp. 1998); La. Children's Code Ann. art. 610 (West Supp. 1999); Mich. Comp. Laws Ann. § 722.623 (West Supp. 1998); Minn. Stat. Ann. § 626.556 (West Supp. 2001); Miss. Code Ann. § 43-21-353 (Supp. 2002); N.H. Rev. Stat. Ann. § 169-C:30 (Supp. 1998); 23 Pa. Cons. Stat. Ann. § 6313 (West Supp. 1998); Tenn. Code Ann. § 37-1-403 (Supp. 2001); Utah Code Ann. § 62A-4a-403 (Supp. 2000); Wyo. Stat. Ann. § 14-3-205 (Michie 1997).

⁷¹ See, e.g., Kan. Stat. Ann. § 38-1522 (WESTLAW 2001); Mont. Code Ann. § 41-3-201 (Supp. 2001); Okla. Stat. Ann. § 10-7103 (West Supp. 2000).

⁷² See, e.g., Iowa Code Ann. § 232.69 (WESTLAW 2001); Idaho Code § 16-1619 (Supp. 1998); Nev. Rev. Stat. Ann. § 432B.220 (Supp. 2001); R.I. Gen. Laws § 40-11-3 (Supp. 1999); Vt. Stat. Ann. tit. 33, § 4913 (Supp. 1998).

⁷³ See, e.g., Wash. Rev. Code Ann. § 26.44.030 (West Supp. 2002); W. Va. Code Ann. § 49-6A-2 (Supp. 2000).

⁷⁴ See, e.g., Cal. Penal Code § 11166 (West Supp. 2002); 325 Ill. Comp. Stat. Ann. 5/7 (West Supp. 1998); Iowa Code Ann. § 232.70 (WESTLAW 2001); La. Children's Code Ann. art. 610 (West Supp. 1999); Mass. Gen. Laws Ann. ch. 119, § 51A (West Supp. 1998); Mich. Comp. Laws Ann. § 722.623 (West Supp. 1998); Minn. Stat. Ann. § 626.556 (West Supp. 2001); Miss. Code Ann. § 43-21-353 (Supp. 2002); 23 Pa. Cons. Stat. Ann. § 6313 (West Supp. 1998).

⁷⁵ Del. Code Ann. tit. 16, § 904 (1995); D.C. Code Ann. § 4-1321.03 (Supp. 2001); Ga. Code Ann. § 19-7-5 (Supp. 2000); Kan. Stat. Ann. § 38-1522 (WESTLAW 2001); N.H. Rev. Stat. Ann. § 169-C:30 (Supp. 1998); N.D. Cent. Code § 50-25.1-04 (1998); Ohio Rev. Code Ann. § 2151.421 (Supp. 2000).

- The name and address of the child and the child's parents or other persons responsible for the child's care;
- The child's age,
- The nature and extent of the child's injuries; and
- Any other information relevant to the investigation.

1. Who Receives Reports

Allegations of suspected abuse may be reported to any official agency, such as the Department of Social Services or law enforcement. Mandatory reporters, however, are usually required to contact a specified agency. Pursuant to CAPTA's requirements, every State has established social service systems to receive reports and provide services for the treatment of maltreated children and their families.⁷⁶ Several States do provide the reporter with discretion concerning whether to report to social services or law enforcement.⁷⁷ For example, in Tennessee, a mandated reporter may report to the appropriate juvenile judge, sheriff's office or local law enforcement office, or to the local office of the Department of Children's Services.⁷⁸

Many jurisdictions define the circumstances or types of reports in which law enforcement, which may include State attorneys, involvement is required. For example, several jurisdictions require that any person who, in the course of processing or producing visual or printed matter, has reasonable cause to suspect that the matter visually depicts a child engaged in conduct of a sexually exploitative nature make a report to the appropriate law enforcement agency.⁷⁹ Additionally, Louisiana requires reports, in which the abuse or neglect is believed to be perpetrated by someone other than a caretaker be filed immediately with the appropriate State law enforcement agency.⁸⁰ Similarly, Maine requires such reports be filed with the appropriate District Attorney's Office.⁸¹

Other jurisdictions require that certain forms of maltreatment be reported to a law enforcement agency.⁸² In Illinois, for instance, the Department of Children and Family Services must notify the appropriate law enforcement personnel and the Office of the State's Attorney of "any report alleging the death

⁷⁶ 42 U.S.C.A. § 5106a(a)(1)-(3) (West Supp. 1998).

⁷⁷ See, e.g., Ariz. Rev. Stat. Ann. § 13-3620 (West Supp. 1998); Colo. Rev. Stat. Ann. § 19-3-304 (West Supp. 2001); D.C. Code Ann. § 4-1321.02 (Supp. 2001); Haw. Rev. Stat. § 350-1.1 (Supp. 2001); Idaho Code § 16-1619(a) (Supp. 1998); Minn. Stat. Ann. § 626.556 (West Supp. 2001); Neb. Rev. Stat. Ann. § 28-711 (Michie 1995); Utah Code Ann. § 62A-4a-403 (Supp. 2000).

⁷⁸ Tenn. Code Ann. § 37-1-403 (Supp. 2001).

⁷⁹ See Alaska Stat. § 47.17.023 (Michie 1996). See also Cal. Penal Code § 11166 (West Supp. 2002); Colo. Rev. Stat. Ann. § 19-3-304 (West Supp. 2001); Ga. Code Ann. § 16-12-100 (Supp. 1998); La. Children's Code Ann. art. 610 (West Supp. 1999).

⁸⁰ La. Children's Code Ann. art. 610 (West Supp. 1999).

⁸¹ Me. Rev. Stat. Ann. tit. 22, § 4011 (West Supp. 2001).

⁸² See, e.g., Alaska Stat. § 47.17.020 (Supp. 1999); Ark. Code Ann. § 12-12-509 (WESTLAW 2001); Conn. Gen. Stat. Ann. § 17a-101b (West 1998); 325 Ill. Comp. Stat. Ann. 5/7 (West Supp. 1998); La. Children's Code Ann. art. 610 (West Supp. 1999); Mo. Ann. Stat. § 210.145 (West Supp. 2000); N.H. Rev. Stat. Ann. § 169-C:38 (Supp. 1998); Tex. Fam. Code Ann. § 261.105 (West Supp. 1999); W.Va. Code Ann. § 49-6A-5 (1996).

of a child, serious injury to a child including, but not limited to, brain damage, skull fractures, subdural hematomas, and, internal injuries, torture of a child, malnutrition of a child, and sexual abuse to a child, including, but not limited to sexual intercourse, sexual exploitation, sexual molestation, and sexually transmitted disease in a child age 12 and under."⁸³

2. Reporting Suspicious Deaths

Some States also include specific reporting procedures for special situations. Approximately thirty-one States have enacted reporting procedures to be followed in the event of a suspicious child death.⁸⁴ Typically, these statutes instruct a mandatory reporter to report a suspected child death to a medical examiner or coroner rather than the local social services agency. For States that do not have specific reporting procedures for suspicious child deaths, standard child abuse reporting procedures apply.⁸⁵

3. Reporting Drug-Exposed Infants

Approximately thirteen States have enacted legislation regarding specific reporting procedures to be followed for drug-exposed infants.⁸⁶ For instance:

- Illinois requires that any person required to report may refer to the Department of Human Services any pregnant person in this State who is addicted as defined in the Alcoholism and Other Drug Abuse and Dependency Act. The department shall notify the local Infant Mortality Reduction Network service provider or department-funded prenatal care provider in the area in which the person resides. The service provider shall prepare a case management plan and assist the pregnant woman in obtaining counseling and treatment from a local substance abuse service provider licensed by the Department of Human Services or a licensed hospital which provides substance abuse treatment services. The pregnant woman will be monitored through the service program.⁸⁷

Standard reporting procedures apply in those States that statutorily define infant drug-exposure as child abuse and neglect, but have no specific reporting procedures.⁸⁸

⁸³ 325 Ill. Comp. Stat. Ann. 5/7 (West Supp. 1998).

⁸⁴ See Dep't of Health and Human Services, Child Abuse and Neglect State Statutes Compendium of Laws: Special Reporting Procedures for Suspicious Deaths (2002).

⁸⁵ See Dep't of Health and Human Services, Child Abuse and Neglect State Statutes Compendium of Laws: Reporting Procedures (2002).

⁸⁶ See Dep't of Health and Human Services, Child Abuse and Neglect State Statutes Compendium of Laws: Special Reporting Procedures for Drug-Exposed Infants (2002).

⁸⁷ 325 Ill. Comp. Stat. Ann. 5/7.3b (West Supp. 1998).

⁸⁸ See Dep't of Health and Human Services, Child Abuse and Neglect State Statutes Compendium of Laws: Reporting Procedures (2002).

D. Immunity

As required under CAPTA, States must provide provisions for immunity from prosecution under State and local laws and regulations for individuals making good faith reports of suspected or known instances of child abuse or neglect.⁸⁹ Immunity statutes protect reporters from civil or criminal liability that they might otherwise incur due to the filing of a report. These provisions are aimed at situations in which, for example, a parent files an action for slander against a teacher, doctor, or other reporter who refers his suspicion of abuse to a State official. While these provisions may not prevent the filing of such lawsuits, they would, within the limitations discussed below, prevent an outcome favorable to the parent.

Today, all jurisdictions provide reporters with immunity from liability under their reporting laws. A typical statute reads, "any person (within certain possible limitations)...making a report...shall be immune from liability, criminal or civil, that might otherwise be incurred or imposed." Immunity provisions, however, vary from State to State.

1. Limitations of Reporter Immunity

In most jurisdictions, permissive reporters are generally not distinguished from mandated reporters in immunity provisions. For instance, most statutes employ language such as "anyone participating in the making of a report...shall be immune from liability."⁹⁰ However, in Massachusetts, permissive reporters are protected only if reports are made in good faith, while immunity is absolute for mandated reporters.⁹¹ Additionally, Vermont's statute only extends immunity to mandated reporters, and does not include "anyone" with knowledge of maltreatment.⁹²

The most commonly encountered limitation on reporter immunity is the requirement that reports be made in good faith. Immunity, therefore, does not extend to reports made maliciously or in bad faith. The Rhode Island statute is typical, "any person participating in good faith in making a report...shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed."⁹³

⁸⁹ 42 U.S.C.A. § 5106a(b)(2)(A)(iv) (West Supp. 1998).

⁹⁰ *See, e.g.*, Del. Code Ann. tit. 16, § 908 (Supp. 1999); Haw. Rev. Stat. § 350-3 (1998); Idaho Code § 16-1620 (Supp. 1998); Ky. Rev. Stat. Ann. § 620.050 (Michie Supp. 1998); La. Children's Code Ann. art 611 (West 1995).

⁹¹ Mass. Gen. Laws Ann. ch. 119, § 51A (West Supp. 1998).

⁹² Vt. Stat. Ann. tit. 33, § 4913(c) (1991).

⁹³ R.I. Gen. Laws § 40-11-4 (1997). *See also* Ala. Code § 24-14-9 (1998); Alaska Stat. § 47.17.050 (Michie 1996); Colo. Rev. Stat. Ann. § 19-3-309 (West Supp. 1996); Fla. Stat. Ann. § 39.203 (West Supp. 1999); Haw. Rev. Stat. § 350-3 (1998); Iowa Code Ann. § 232.73 (WESTLAW 2001); Mich. Comp. Laws Ann. § 722.625 (West Supp. 2000); N.H. Rev. Stat. Ann. § 169-C:31 (Supp. 1998); Or. Rev. Stat. Ann. § 419B.025 (1995); Wis. Stat. Ann. § 48.981(4) (West Supp. 2001).

In a few States, however, immunity is absolute and is not dependent upon the reporter's reasonable suspicion of abuse. In New Jersey, for example, anyone acting pursuant to the reporting laws in the making of a report under the reporting laws shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed.⁹⁴ Unlike good faith immunity, absolute immunity precludes redress to those harmed by false accusations.

The good faith requirement is important because it presents an issue that might require judicial interpretation; that is, a court may be called upon to determine whether a reporter acted in good faith, thus exposing the reporter to the time and expense of a legal defense. Consequently, a number of States include a "presumption" in their statutes that the reporter is acting in good faith.⁹⁵ In Indiana for example, "any person making a report that a child may be a victim of child abuse or neglect...is presumed to have acted in good faith."⁹⁶ Presumptions of good faith may give reporters facing a lawsuit a defense that could reduce the complexity, and therefore, the expense and time of such a defense.

A few jurisdictions, however, indicate that such presumptions are rebuttable (i.e., disputable). In the District of Columbia, "in all civil or criminal proceedings concerning the child or resulting from the report good faith shall be presumed unless rebutted."⁹⁷ Maine⁹⁸ and South Carolina⁹⁹ have similar statutes.

E. Reporting Penalties

1. Failure to Report

Many cases of child maltreatment are neither reported nor investigated even when suspected by professionals. Therefore, the majority of States, approximately 47, now provide in their reporting statutes a specific penalty for failure to report suspected cases of abuse.¹⁰⁰ Of these jurisdictions, approximately 35 States impose penalties on mandatory reporters who *knowingly*, *knows or should have known*, or *willfully* fail to report suspected abuse.¹⁰¹

⁹⁴ N.J. Stat. Ann. § 9:6-8.13 (West 1993).

⁹⁵ See, e.g., Colo. Rev. Stat. Ann. § 19-3-309 (West Supp. 1996); 325 Ill. Comp. Stat. Ann. 5/9 (West Supp. 1998); Mich. Comp. Laws Ann. § 722.625 (West Supp. 2000); Miss. Code Ann. § 43-21-355 (Supp. 1998); N.M. Stat. Ann. § 32A-4-5(B) (Michie 1995); N.Y. Soc. Serv. Law § 419 (McKinney Supp. 1999); N.D. Cent. Code § 50-25.1-09 (Supp. 1997); 23 Pa. Cons. Stat. Ann. § 6318 (West Supp. 1998); Tenn. Code Ann. § 37-1-410(a) (Supp. 2001); Wis. Stat. Ann. § 48.981(4) (West Supp. 2001); Wyo. Stat. Ann. § 14-3-209 (Michie 1997).

⁹⁶ Ind. Code Ann. § 31-33-6-3 (Michie 1997).

⁹⁷ D.C. Code Ann. § 4-1321.04 (Supp. 2001).

⁹⁸ Me. Rev. Stat. Ann. tit. 22, § 4014 (West 1992).

⁹⁹ S.C. Code Ann. § 20-7-540 (Supp. 2000).

¹⁰⁰ See Dep't of Health and Human Services, Child Abuse and Neglect State Statutes Compendium of Laws: Penalties for Failure to Report (2002).

¹⁰¹ Ala. Code § 26-14-13 (1992); Alaska Stat. § 47.17.068 (Michie 1996); Ark. Code Ann. § 12-12-504 (Michie Supp. 1997); Cal. Penal Code § 11172(e) (West Supp. 2002); Colo. Rev. Stat. Ann. § 19-3-304 (West Supp. 2001); Del. Code Ann. tit. 16, § 914 (Supp. 1998); D.C. Code Ann. § 4-1321.07 (Supp. 2001); Fla. Stat. Ann. § 39.205 (West Supp. 2000); Ga. Code Ann. § 19-7-5 (Supp. 2000); Haw. Rev. Stat. § 350-1.2 (1998); 325 Ill. Comp. Stat. Ann. 5/4 (WESTLAW 2001); Ind. Code Ann. § 31-33-22-1 (Michie 1997); Iowa Code Ann. § 232.75 (WESTLAW 2001); Kan. Stat. Ann. § 38-1522 (WESTLAW 2001); Ky. Rev. Stat. Ann. § 620.990

A couple of States impose penalties on mandatory reporters who *intentionally*,¹⁰² *negligently*,¹⁰³ or *purposely*¹⁰⁴ fail to report suspected abuse. A few States impose penalties without providing a standard. In Connecticut for instance, "any person required to report...who fails to make such report shall be fined not more than \$500.00."¹⁰⁵

Failure to report is classified as a misdemeanor in approximately thirty-five States.¹⁰⁶ Typically, sanctions are in the form of a fine and/or imprisonment. States may also provide criminal penalties for failure to report a serious crime or misprision of felony statutes, that may be applicable when the child has died, suffered serious injury, been sexually assaulted, or otherwise been a victim of a serious criminal offense. However, criminal prosecutions for failure to report are rare.

Of greater impact on mandatory reporters themselves are the provisions exposing them to civil lawsuits for failure to report. The potential financial liability for further injury of a child whose maltreatment should have been detected and prevented by a timely report can be quite extensive. Statutory language prescribing civil liability, such as "...is civilly liable for the damages proximately caused by such failure," is found within the reporting laws of a handful of States.¹⁰⁷

(Supp. 2000); Mich. Comp. Laws Ann. § 722.633 (West Supp. 1998); Minn. Stat. Ann. § 626.556 (West Supp. 2000); Mont. Code Ann. § 41-3-207 (1997); Neb. Rev. Stat. Ann. § 28-717 (Michie 1995); Nev. Rev. Stat. Ann. § 432B.240 (1997); N.H. Rev. Stat. Ann. § 169-C:39 (1994); N.J. Stat. Ann. § 9:6-8.14 (West 1993); N.Y. Soc. Serv. Law § 420 (McKinney 1992); N.D. Cent. Code § 50-25.1-13 (Supp. 1997); Okla. Stat. Ann. § 10-7103 (West Supp. 2001); 23 Pa. Cons. Stat. Ann. § 6319 (West 1991); R.I. Gen. Laws § 40-11-6.1 (1997); S.C. Code Ann. § 20-7-560 (Law. Co-op. Supp. 1998); S.D. Codified Laws § 26-8A-6 (Michie 1992); Tenn. Code Ann. § 37-1-412 (1996); Tex. Fam. Code Ann. § 261.109 (West 1996); Utah Code Ann. § 62A-4a-411 (1997); Wash. Rev. Code Ann. § 26.44.080 (West 1997); W. Va. Code Ann. § 49-6A-8 (1996); Wis. Stat. Ann. § 48.981 (West Supp. 2001).

¹⁰² See, e.g., S.D. Codified Laws § 26-8A-3 (Michie Supp. 1998); Wis. Stat. Ann. § 48.981(6) (West Supp. 2001).

¹⁰³ See, e.g., Ark. Code Ann. § 12-12-504 (Michie Supp. 1997).

¹⁰⁴ See, e.g., Mont. Code Ann. § 41-3-207 (1997).

¹⁰⁵ Conn. Gen. Stat. Ann. § 17a-101a (West 1998).

¹⁰⁶ Ala. Code § 26-14-13 (1992); Alaska Stat. § 47.17.068 (Michie 1996); Ariz. Rev. Stat. § 13-3620 (West Supp. 1998); Ark. Code Ann. § 12-12-504 (Michie Supp. 1997); Cal. Penal Code § 11172(e) (West Supp. 2002); Colo. Rev. Stat. Ann. § 19-3-304 (West Supp. 2001); Fla. Stat. Ann. § 39.205 (West Supp. 2000); Ga. Code Ann. § 19-7-5 (Supp. 2000); Haw. Rev. Stat. § 350-1.2 (1998); Idaho Code § 16-1619 (Supp. 1998); 325 Ill. Comp. Stat. Ann. 5/4 (WESTLAW 2001); Ind. Code Ann. § 31-33-22-1 (Michie 1997); Iowa Code Ann. § 232.75 (WESTLAW 2001); Kan. Stat. Ann. § 38-1522 (WESTLAW 2001); Ky. Rev. Stat. Ann. § 620.990 (Supp. 2000); Mich. Comp. Laws Ann. § 722.633 (West Supp. 1998); Minn. Stat. Ann. § 626.556 (West Supp. 2000); Mo. Ann. Stat. § 210.165 (West 1996); Mont. Code Ann. § 41-3-207 (1997); Neb. Rev. Stat. Ann. § 28-717 (Michie 1995); Nev. Rev. Stat. Ann. § 432B.240 (1997); N.H. Rev. Stat. Ann. § 169-C:39 (1994); N.M. Stat. Ann. § 32A-4-3 (Supp. 2001); N.Y. Soc. Serv. Law § 420 (McKinney 1992); N.D. Cent. Code § 50-25.1-13 (Supp. 1997); Okla. Stat. Ann. § 10-7103 (West Supp. 2001); 23 Pa. Cons. Stat. Ann. § 6319 (West 1991); R.I. Gen. Laws § 40-11-6.1 (1997); S.C. Code Ann. § 20-7-560 (Law. Co-op. Supp. 1998); S.D. Codified Laws § 26-8A-3 (Supp. 1998); Tenn. Code Ann. § 37-1-412 (1996); Tex. Fam. Code Ann. § 261.109 (West 1996); Utah Code Ann. § 62A-4a-411 (1997); Wash. Rev. Code Ann. § 26.44.080 (West 1997); W. Va. Code Ann. § 49-6A-8 (1996).

¹⁰⁷ See, e.g., Ark. Code Ann. § 12-12-504 (Michie Supp. 1997); Iowa Code Ann. § 232.75 (WESTLAW 2001); Mich. Comp. Laws Ann. § 722.633 (West Supp. 1998); Mont. Code Ann. § 41-3-207 (1997); N.Y. Soc. Serv. Law § 420 (McKinney 1992); R.I. Gen. Laws § 40-11-6.1 (1997).

2. False Reporting

In order to 31 States impose penalties for false reporting of abuse.¹⁰⁸ The most common standards used by States to impose penalties are *knowingly* and/or *willfully* filing a false report of abuse or neglect.¹⁰⁹ A few jurisdictions impose penalties for *intentionally* making false notification of abuse or neglect.¹¹⁰

The majority of States imposing penalties, approximately eighteen, classify false reporting as a misdemeanor,¹¹¹ while approximately three States classify false reporting as a felony.¹¹² For instance, Iowa law provides that "a person who reports or causes to be reported to the Department of Human Services false information regarding an alleged act of child abuse, knowing that the information is false or that the act did not occur, commits a simple misdemeanor."¹¹³ Statutory language prescribing civil liability is found within the reporting laws of a few States.¹¹⁴

¹⁰⁸ See Dep't of Health and Human Services, Child Abuse and Neglect State Statutes Compendium of Laws: Penalties for False Reporting (2002).

¹⁰⁹ See, e.g., Ala. Code § 13A-10-9 (1992); Ark. Code Ann. § 12-12-504 (Michie Supp. 1997); Colo. Rev. Stat. Ann. § 19-3-304 (West Supp. 2001); Conn. Gen. Stat. Ann. § 17a-101e(c) (West 1998); Del. Code Ann. tit. 16, § 914 (Supp. 1998); Fla. Stat. Ann. § 39.205(5) (West Supp. 2000); 325 Ill. Comp. Stat. Ann. 5/4 (WESTLAW 2001); Iowa Code Ann. § 232.75(3) (WESTLAW 2001); La. Children's Code Ann. art. 609(C) (West 1995); Mass. Gen. Laws Ann. ch. 119, § 51A (West Supp. 1998); N.Y. Penal Law § 240.55(3) (McKinney 1992); N.D. Cent. Code § 50-25.1-13 (Supp. 1997); Ohio Rev. Code Ann. § 2921.14 (Supp. 2000); Okla. Stat. Ann. § 10-7103(D) (West Supp. 2001); R.I. Gen. Laws § 40-11-3.2 (1997); S.C. Code Ann. § 20-7-567 (Law. Co-op. Supp. 1998); Va. Code Ann. § 63.1-248.5:1.01(A) (Lexis Supp. 1999).

¹¹⁰ See, e.g., Ind. Code Ann. § 31-33-22-3 (Michie 1997); Mich. Comp. Laws Ann. § 722.633 (West Supp. 1998); Mo. Ann. Stat. § 210.165 (West 1996); Wash. Rev. Code Ann. § 26.44.060(4) (West Supp. 1999).

¹¹¹ Ala. Code § 13A-10-9 (1992); Ariz. Rev. Stat. Ann. § 13-3620.01 (West Supp. 1998); Ark. Code Ann. § 12-12-504 (Michie Supp. 1997); Colo. Rev. Stat. Ann. § 19-3-304 (West Supp. 2001); Ind. Code Ann. § 31-33-22-3 (Michie 1997); Iowa Code Ann. § 232.75(3) (WESTLAW 2001); Ky. Rev. Stat. Ann. § 620.050(1) (Michie Supp. 2000); Mich. Comp. Laws Ann. § 722.633 (West Supp. 1998); Mo. Ann. Stat. § 210.165 (West 1996); N.Y. Penal Law § 240.55(3) (McKinney Supp. 2001); N.D. Cent. Code § 50-25.1-13 (Supp. 1997); Ohio Rev. Code Ann. § 2921.14 (Anderson 1996); Okla. Stat. Ann. § 10-7103(D) (West Supp. 2001); R.I. Gen. Laws § 40-11-3.2 (1997); S.C. Code Ann. § 20-7-567 (Law. Co-op. Supp. 1998); Tex. Fam. Code Ann. § 261.107 (West Supp. 1999); Va. Code Ann. § 63.1-248.5:1.01(A) (Lexis Supp. 1999); Wash. Rev. Code Ann. § 26.44.060(4) (West Supp. 1999).

¹¹² Fla. Stat. Ann. § 39.205 (West Supp. 2000); 325 Ill. Comp. Stat. Ann. 5/4 (WESTLAW 2001); Tenn. Code Ann. § 37-1-413 (1996) [for false reports of sexual abuse]. In addition, some States classify as a felony a subsequent false report of abuse. See e.g., Ark. Code Ann. § 12-12-504 (Michie Supp. 1997); Ind. Code Ann. § 31-33-22-3 (Michie 1997); Mo. Ann. Stat. § 210.165 (West 1996).

¹¹³ Iowa Code Ann. § 232.75 (WESTLAW 2001).

¹¹⁴ See, e.g., Colo. Rev. Stat. Ann. § 19-3-304 (West Supp. 2001); Minn. Stat. Ann. § 626.556 (West Supp. 2000); N.D. Cent. Code § 50-25.1-13 (Supp. 1997).

III. IMPACT OF MANDATORY REPORTING LAWS

The literature indicates that mandatory reporting statutes have contributed to professionals over and under-reporting suspected child maltreatment.

A. Over-Reporting

Research indicates that mandatory reporting laws may result in the over-reporting of suspected child maltreatment. For example, commentators suggest that broad definitions of child maltreatment found in reporting laws may contribute to the over-reporting of suspected abuse.¹¹⁵ For instance, States addressing the issue of corporal punishment use terms such as "excessive corporal punishment" and the "reasonable exercise of discipline." In most State statutes there is no explanation as to what is considered "excessive" or "reasonable." Such terms may not inform a reporter as to what conduct is proscribed. Consequently, non-specific reporting circumstances may contribute to the over-reporting by professionals.

In addition, professionals may have a bias toward reporting suspected maltreatment. Such behavior may be motivated by an overall concern for child protection, the prompt identification of victimized children to protect from potentially serious consequences of delay, and possible legal consequences for failure to report as required.

Research also indicates that the over-reporting of abuse is a contributor to the high rates of unsubstantiated reports.¹¹⁶ For example, nearly 2.8 million children were reported to Child Protective Services agencies as alleged victims of maltreatment in 2000, but only 879,000 children were identified as victims of substantiated abuse or neglect.¹¹⁷ High rates of reporting have made it necessary for most child protection agencies to screen and prioritize reports before conducting investigations. High rates of unsubstantiated reports may overburden agencies, which potentially interferes with adequate services to maltreated children and their families.

B. Under-Reporting

The literature also reveals that numerous professionals admit that during their careers, they have failed to report suspected maltreatment to the appropriate agencies. One possible reason is that professionals, such as elementary teachers, still lack training and knowledge about legal obligations and procedures for reporting.

Some reporters may also be reluctant to report because they view social services agencies as overburdened and understaffed, which may result in more harm to the child

¹¹⁵ Douglas J. Besharov & Lisa A. Laumann, *Child Abuse Reporting*, 33 *Society* 40 (1996); Kalichman, *supra* note 6.

¹¹⁶ Brett Drake, *Unraveling "Unsubstantiated,"* 1 *Child Maltreatment* 261 (1996).

¹¹⁷ U.S. Department of Health and Human Services, Administration on Children, Youth and Families, *Child Maltreatment 2000* (Washington, DC: U.S. Government Printing Office, 2002).

through inadequate investigation and services. In addition, mandated reporters may believe that their professional relationship with the child will be strained if they report their suspicions of abuse.

The issue of subjectivity may also account for the under-reporting of abuse. Many laws defining child maltreatment are broadly written with ambiguous requirements, which may result in professionals lacking guidance and standards regarding when intervention is required.¹¹⁸ For example, mandatory reporters are required to report abuse when they have *reasonable cause to know or suspect* that maltreatment is occurring. Reasonable cause to know or suspect is a vague concept that is difficult to interpret and may lead to the under-reporting of abuse.

IV. CONCLUSION

Every State and the District of Columbia have enacted laws requiring the reporting of suspected child maltreatment. The establishment of such laws is a direct reflection of the public awareness of the need to address the problems of child maltreatment. Reporting laws demonstrate the diversity and complexity of the systems established by the States in recognition of their responsibility to victimized children. The various elements of such laws create a means for the identification of maltreated children so that States can provide protective services and treatment.

Although reporting laws in all jurisdictions share a common purpose and similar format, there are great variations across States as to the particular requirements imposed by reporting laws. This paper represents an attempt to examine and analyze reporting trends in each State and the District of Columbia. The paper presents many issues that States must address when enacting child maltreatment legislation for reporting purposes. This cross-State comparison can assist States in amending or incorporating new issues into their child maltreatment statutes. Maintaining effective reporting legislation is essential, as it is one mechanism for State protection of children and their future.

¹¹⁸ Besharov, *supra* note 115; Kalichman, *supra* note 6.